

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PATRICK MURPHY, SUZANNE MILLER, and
TOMORROW RUS TODAY, INC. (TRUST), a
Washington corporation,

CV-06-1085-ST

Plaintiffs,

NOTICE TO PARTIES OF:

v.

1. CONVERSION OF MOTION TO
DISMISS INTO A MOTION FOR
SUMMARY JUDGMENT and

CITY OF PORTLAND, OFFICER CHRIS
TRAYNOR, and DOES 1-50,

2. WAIVER OF L.R. 56.1(a)(2)

Defendants.

STEWART, Magistrate Judge:

This court today heard oral argument on the City of Portland's Motion to Dismiss (docket #21). Certain materials outside the pleadings have already been submitted in connection with that motion. In addition, additional materials outside the pleadings may be relevant on the issue of identity of interest between the Portland Police Bureau and the City of Portland. Thus, after considering the arguments raised both in briefing and at oral argument, this court has determined

that evaluation of that motion will require consideration of matters outside the pleadings.

Conversion of a motion to dismiss into a motion for summary judgment requires notice to all parties and an adequate opportunity for all parties to develop the factual record. *See Grove v. Mead Sch. Dist.*, 753 F2d 1528, 1532-33 (9th Cir 1985).

THEREFORE, this court hereby notifies all parties as follows:

1. This court will consider matters outside the pleadings and treat defendants' Motion to Dismiss (docket #21) as a Motion for Summary Judgment. The parties may submit any other relevant evidence with their supplemental briefing on the pending motion. Parties relying on materials (affidavits, declarations, etc.) previously filed in conjunction with this motion should give detailed citations (including docket number) to those materials, but should not resubmit those materials.

2. Local Rule 56.1(a)(2) requiring a Concise Statement of Material Facts supporting a motion for summary judgment is waived.

DATED this 12th day of February, 2007.

____/s/ Janice M. Stewart _____
Janice M. Stewart
United States Magistrate Judge